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OFFICE OF THE DIRECTOR
TC 3600

In re Application of: Rick C. Winfree et al. : PETITION TO WITHDRAW
Application No. 09/026,824 : HOLDING OF ABANDONMENT
Filed: February 20, 1998 : UNDER
Attorney Docket No.: TACOBEL.010A : 37 C.F.R. 1.181
For: RESTAURANT FOOD PREPARATION :
LINE :
:

This is in response to applicant's petition filed on September 10, 2004 to have the holding of abandonment dated August 25, 2004 withdrawn.

The petition is **GRANTED**.

A review of the file record reveals that the Board of Appeals and Patent Interferences reversed all of the grounds of rejection put forward by the examiner and entered new grounds of rejection under 37 C.F.R. 1.196(b) in their decision dated April 29, 2004. The Board's rejection covered fewer claims than set forth by the examiner. Also, several claims stood allowed prior to appeal.

Petitioner argues that pursuant to MPEP 1214.06, following the expiration of the period for response, the examiner should have passed the application onto issue with those claims held allowable prior to Appeal and the claims not rejected by the Board in their new rejection.

In view of the above noted prosecution history, the Notice of Abandonment dated August 25, 2004 was improper since there were allowable claims identified by the examiner prior to Appeal and the Board allowed additional claims. Accordingly, the application should have been allowed.

Accordingly, the petition is granted and the holding of abandonment withdrawn. The application will be forwarded to the examiner for the allowance of claims 31, 50, 51 and 64. All other claims, which were either rejected by the Board of Appeals and Patent

Interference or indicated as containing allowable subject but dependent on a rejected independent claim, will be cancelled as indicated by MPEP 1214.06 II.

Summary: *Petition GRANTED*


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